

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of)
)
Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1995)

MD Docket No. 95-3

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TO: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

COMMENTS IN SUPPORT
OF NOTICE OF PROPOSED RULEMAKING

Duhamel Broadcasting Enterprises ("Duhamel"), by and through its undersigned attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits its Comments in support of a separate fee category for television satellite stations as proposed in the Commission's Notice of Proposed Rulemaking, Assessment and Collection of Regulatory Fees for Fiscal Year 1995, FCC 95-14, 60 Fed. Reg. 3807 (January 19, 1995) ("NPRM"). This submission is timely made within the period designated by the Commission for comments on this matter.

I. FACTUAL STATEMENT

1. Duhamel is the licensee of the following broadcast stations:

KOTA-TV, Rapid, City, South Dakota
KOTA(AM), Rapid City, South Dakota
KHSD-TV, Lead, South Dakota
KSGW-TV, Sheridan, Wyoming
KDUH-TV, Scottsbluff, Nebraska
KEZV(FM), Spearfish, South Dakota

and their associated low power television and auxiliary stations.

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2. Duhamel has sought to meet the broadcast service needs of the Rapid City, South Dakota area for more than five (5) decades. Duhamel began this service in the early 1940's with an AM station, KOTA(AM), Rapid City, South Dakota. Later, Duhamel added television and FM service as well.

3. To meet the television viewing needs of the area, Duhamel brought VHF commercial television station KOTA-TV, Rapid City, South Dakota to the air in 1955. The Rapid City, South Dakota viewing area, however, covers a vast area and is divided into two Arbitron Areas of Dominant Influence ("ADI"). The Rapid City, South Dakota ADI extends from the North Dakota-South Dakota border, south to Cheyenne, Nebraska and west to include Sheridan, Wyoming. The Cheyenne, Wyoming - Scottsbluff, Nebraska - Sterling, Colorado ADI encompasses Cheyenne, Wyoming and claims an island in the middle of the Rapid City, South Dakota ADI surrounding Scottsbluff, Nebraska. In all, the area covered by these markets is equivalent to an area which, from north to south, would stretch between Washington, D.C. and Boston, and from east to west, from the Atlantic Ocean to Buffalo, New York. The population, in contrast, is much smaller. Collectively, these two ADI's account for 134,500 TV households.

4. To fully serve these areas, Duhamel added three VHF stations to act as satellites of KOTA-TV. KDUH-TV, Scottsbluff, Nebraska, serves the island within the Rapid City, South Dakota ADI which is actually assigned to the Cheyenne, Wyoming ADI. KHSD-TV, Lead, South Dakota, approximately 35 miles from Rapid City, transmits from a peak 4,000 feet above the surrounding

prairie and provides coverage to western South Dakota, southwestern North Dakota, southeastern Montana and extreme northeastern Wyoming. KSGW-TV is the only television station licensed to Sheridan, Wyoming and provides that area with its only over-the-air major network signal.

5. Without satellite stations such as Duhamel's, most of this four-state area known as the Rapid City viewing area would not receive over-the-air television. For example, of the seven full power television stations licensed to Rapid City proper, three are satellite stations. Together, the seven stations provide only four signals, ABC, NBC, CBS and Public Television service. In the Lead - Deadwood area and in Sheridan, Wyoming, there are no locally-originating stations, only satellites. In the entire Cheyenne, Wyoming - Scottsbluff, Nebraska - Sterling, Colorado ADI, there is only one commercial television station, KGWN-TV, which is not a satellite. Thus, the satellite stations operated by Duhamel and others are vitally important to the viewers of this vast area.

6. As satellites of KOTA-TV, the remaining Duhamel stations pose very little regulatory burden. For instance, in the two areas which have seen the greatest broadcast regulation in recent years, children's television and equal employment opportunity, Duhamel's satellite stations present almost no additional regulatory burden. The most recent license renewal applications for KOTA-TV and KHSD-TV were filed on the same day and contained identical children's programming exhibits. The staff thus needed to review only one exhibit to grant both

applications. Moreover, when the KDUH-TV renewal application was filed less than two months later and the KSGW-TV renewal application was filed six months later, their children's programming exhibits reported the same programming identified in the KOTA/KHSD renewal, updated to reflect additions and detail these stations' individualized non-broadcast efforts. The Commission's review of the KOTA-TV exhibit, then, served as the basis for the grant of the remaining three stations' license renewal grants.

7. Moreover, neither KSGW-TV or KHSD-TV has more than five full-time employees. Accordingly, the Commission does not review an FCC Form 395-B each year for these stations and therefore will not conduct a mid-term EEO review of these stations, nor does it review an FCC Form 396 in connection with these station's license renewal applications.

8. Under the 1994 regulatory fee schedule established in the Commission's Report and Order, Implementation of Section 9 of the Communications Act - Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, FCC 94-140, 59 Fed. Reg. 30984 (June 16, 1994) ("FY 1994 Report and Order"), each of the Duhamel satellite stations was required to pay the same fee as KOTA-TV did, \$5,000. Thus, to serve the South Dakota viewing public, located in the 168th and 196th ADIs, fully for one year, Duhamel had to pay an annual regulatory fee of \$20,000. However, that

same year, a VHF television station in a more densely-packed top 10 market, paid only \$18,000.^{1/}

II. COMMENTS

9. In the NPRM, the Commission proposes a separate fee category for satellite television stations to distinguish those stations from full service television stations. The fee for a satellite television station license would be \$595.00 annually, while the fee for a satellite television station construction permit would be \$200.00. NPRM, at ¶¶ 33, 35.

10. Duhamel applauds the Commission's recognition of the minimal regulatory burden satellite stations pose, the significant public benefit they provide, and the hardship the previous fee schedule placed on them. As noted above, satellite television stations require a minimum of FCC oversight beyond that required for the stations whose signals they relay. However, as satellite television stations most often serve those areas of the country which are relatively sparse in population and are therefore often severely underserved, the public interest benefits of the operation of these stations are disproportionately great. It is precisely the fact that these stations seek to serve sparsely-populated areas that made the high FY 1994 fees unduly harsh for satellite stations.

^{1/} Duhamel filed Comments in Support of a Petition for Reconsideration of the Commission's FY 1994 Report and Order filed by the National Association of Broadcasters, in which it demonstrated the iniquitous results of requiring a satellite television station to pay the same fee as a primary television station. That Petition is still pending before the Commission.

Satellites simply do not have the large audience, and therefore the necessary advertiser revenue base, to support such fees. For this reason, the Commission's proposed fees for satellite television stations strike an appropriate balance which encourages, rather than discourages, construction and operation of full power television satellite stations to serve this otherwise unserved public.

III. CONCLUSION

For the reasons stated herein, Duhamel supports the Commission's proposal to establish a separate category of regulatory fees for satellite television stations. Duhamel further supports the Commission's recognition of the relative regulatory burden and public benefits derived from such stations, as reflected in its proposed regulatory fees.

Respectfully submitted,

DUHAMEL BROADCASTING ENTERPRISES

By: 

Grover C. Cooper
Lauren Ann Lynch
Robert L. Galbreath

Its Attorneys

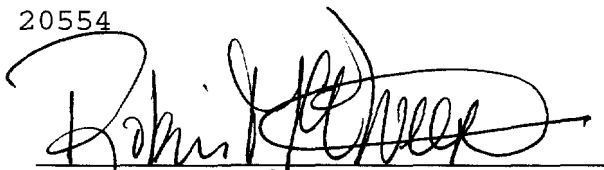
FISHER WAYLAND COOPER LEADER
& ZARAGOZA L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006
(202) 659-3494

Dated: February 13, 1995

CERTIFICATE OF SERVICE

I, Robin L. McElveen, do hereby certify that I have this 13th day of February, 1995, mailed by first-class United States mail, postage prepaid, copies of the foregoing "**COMMENTS IN SUPPORT OF NOTICE OF PROPOSED RULEMAKING**" to the following:

*Peter W. Herrick
Acting Associate Managing Director
Program Analysis
Office of Managing Director
Federal Communications Commission
1919 M Street, N.W.
Room 528
Washington, D.C. 20554


Robin L. McElveen

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